THOMAS TAGGART

IBLA 79-562 Decided April 8, 1980

Appeal from determination of Townsite Trustee, Alaska, Bureau of Land Management, that appellant is ineligible to enter townsite lot after October 21, 1976.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Repealers -- Townsites

   The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of occupancy of a claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Thomas Taggart, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Thomas Taggart (appellant) has appealed from a determination by Townsite Trustee George E. M. Gustafson on behalf of the Alaska State Office, Bureau of Land Management (BLM), that persons whose occupancy of unsubdivided townsite lands commenced after October 21, 1976, cannot claim the land under the townsite laws, as these laws were

repealed on this date. While Gustafson did not expressly determine that appellant's occupancy had begun after this date, it is clear from his statement of reasons that this is so, as appellant states that he entered this lot on or after having been advised on four or five occasions between March 1977 and May 1978 by Gustafson and his assistant that it would be legal and proper to enter. Indeed, the record contains a letter to appellant from Gustafson dated November 20, 1978, advising him that he might proceed with the development of his site.

However, on February 20, 1979, the Department's Regional Solicitor, Alaska, advised Gustafson that persons not in occupancy on October 21, 1976, had no rights which survived the repeal of the townsite laws by section 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 note (1976). Gustafson thereafter initiated the action which has led to this appeal.

Appellant notes on appeal that he has been grievously injured by this determination, as he moved his household 1,500 miles with the express purpose of finding a townsite lot and constructed and occupied a residence there, on the strength of Gustafson's misrepresentation that the sites were available.

[1] In our recent resolution of an appeal involving almost identical circumstances and issues, Royal Harris, 45 IBLA 87 (1979), we said:

> [T]his statute, as well as the other townsite laws, was repealed by section 703 of FLPMA, 90 Stat. 2790. The question then becomes whether appellant has a valid existing right under section 701 of FLPMA, which provides that nothing in the Act shall be construed as terminating any patent, or other land use right or authorization existing on the date of approval of the Act (Oct. 21, 1976). The events giving rise to this appeal postdate the effective date of the Act. Therefore, on October 21, 1976, appellant could have had no valid existing right which would survive FLPMA. Stu Mach, 43 IBLA 306 (1979). When appellant wrote to BLM on May 9, 1977, he had only a hope or expectancy. However, use or occupancy of the public land granted subsequent to the effective date of FLPMA must be under authority of that Act, 43 U.S.C. § 1732(b) (1976); William J. Colman, 40 IBLA 180 (1979), and the erroneous advice provided by BLM could create no rights not authorized by law. Belton E. Hall, 33 IBLA 349 (1978).

Accord, Dennis L. Lattery, 45 IBLA 219 (1980).

[2] In pointing out that he has been seriously damaged by acting in good faith in reliance upon the misrepresentations of law by the trustee, appellant effectively asserts that BLM should be estopped

from rejecting his claim to the townsite lot. This was also an issue in Royal Harris, supra, although the extent of the damage is greater in this case because appellant has changed his residence to the lot site, whereas Harris only partially constructed his house in reliance on the misinformation. Nevertheless, we are obliged to conclude here, as in Harris:

> It is well settled law that the Department can alienate interests in land belonging to the United States only within the limits authorized by law. Union Oil Co. of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975).
>
> William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 89 (1976), illuminates the principle above as follows:
>
> > There is no doubt that Federal employees, and ordinary citizens, are presumed to know the contents of the United States Code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).
> >
> > We believe the rule stated by the Supreme Court in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), is still correct:
> >
> > > * * * that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. (243 U.S. at 409)
> >
> > This position was restated and followed in Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972). In that case, the plaintiff was seeking retired pay for service in the Army Reserves. He contended that the Government was estopped to deny him benefits based upon insufficient years of service in the active reserves, because he had relied on statements and letters from Army officials stating, or at least inferring, that the had enough service in the active reserves. In holding that the statutory service requirements must be strictly fulfilled, the court stated that:
> >
> > > It is true that the government may be estopped by the acts and con! duct of its agents where they are duly authorized and are acting within the

> scope of their authority and in accor!
> dance with the power vested in him,
> as, for instance, in certain cases
> involving contractual dealings with
> the government. But we know of no
> case where an officer or agent of the
> government, such as Colonel Powell of
> the Army in the case before us, has
> estopped the government from enforcing
> a law passed by Congress. Unless a
> law has been repealed or declared
> unconstitutional by the courts, it is
> a part of the supreme law of the land
> and no officer or agent can by his
> actions or conduct waive its provi!
> sions or nullify its enforcement.
> (457 F.2d at 986-987)

Although we are in sympathy with appellant's plight, and would hope that he might be able to gain relief through special legislation, or that he will be able to gain title from the town in which his lot is situated, we are constrained to hold that there is no lawful authority under which this claim can be allowed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the matter appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

I joined with the dissenting opinion in Royal Harris, 45 IBLA 87, 93 (1979), on what effect the repeal of the townsite laws should be as to claimants who initiate their occupancy after the date of the repeal. I adhere to my position in that case. However, unless and until the majority of the Board's position in Harris is overturned, I am constrained to follow the majority's position that no rights can be created by occupancy within a townsite after the date of the repeal of the townsite laws. For this reason only do I join in affirming the decision below.

Joan B. Thompson
Administrative Judge